

**§ 361.51**

than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

*(c) Payment for services.*

(1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

*(d) Duration of services.*

(1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's individualized plan for employment.

(e) *Authorization of services.* The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Sections 12(c) and 101(a)(6) of the Act and 29 U.S.C. 709(c) and 721(a)(6))

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

**34 CFR Ch. III (7-1-02 Edition)**

**§ 361.51 Standards for facilities and providers of services.**

(a) *Accessibility of facilities.* The State plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) *Affirmative action.* The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) *Special communication needs personnel.* The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English speaking ability; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

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(Authority: Sections 12(c) and 101(a)(6)(B) and (C) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(B) and (C))

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

**§ 361.52 Informed choice.**

(a) *General provision.* The State plan must assure that applicants and eligible individuals or, as appropriate, their representatives are provided information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) *Written policies and procedures.* The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and

implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives in acquiring information that enables them to exercise informed choice in the development of their IPEs with respect to the selection of the—

(i) Employment outcome;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) *Information and assistance in the selection of vocational rehabilitation serv-*

*ices and service providers.* In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

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(5) Opportunities for individuals to visit or experience various work and service provider settings.

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(Authority: Sections 12(c), 101(a)(19); 102(b)(2)(B) and 102(d) of the Act; 29 U.S.C. 709(c), 721(a)(19); 722(b)(2)(B) and 722(d))

[66 FR 4382, Jan. 17, 2001, as amended at 66 FR 7253, Jan. 22, 2001]

**§ 361.53 Comparable services and benefits.**

(a) *Determination of availability.* The State plan must assure that prior to providing any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual, or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(b)(10), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(a) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job

retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.*

(1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.*

(1) The State plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of vocational rehabilitation services (other than those services listed in paragraph (b) of this section) that are included in the IPE, including the provision of those vocational rehabilitation services during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.